IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 777 OF 2004

1. Mr. V. Vishwanathan
A-1/10/2, 14th Cross Street,
Besant Nagar, Chennai 600 090

2. Mr. V. Chandrasekar
No.S-24, 35th Cross Street,
Besant Nagar, Chennai 600 090 ...Applicants.

V/s

1. State of Maharashtra

2. Industrial Development
Bank of India, Head Office:
IDBI Tower, Cuffe Parade,
Mumbai 400 005. ...Respondents.

Ms. N.S.Nappinai for the applicant.

Mr. Shirish Gupte with Mr. Subodh Desai for the
respondent No.2.

CORAM: V.M.KANADE,J.
DATE: 3rd October, 2005
(In Chamber at 5.00 P.M.)

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicants and the learned Counsel appearing on behalf of the respondent No.2.

2. Respondent No.2, a Statutory Corporation established under the Industrial Development Bank of India (hereinafter referred to as "the complainant"), has filed a complaint against the applicants under section 138 of the Negotiable Instruments Act. The process was issued on the said complaint against the

present applicants. The applicants are challenging the said order of issuance of process by the Magistrate in the said complaint.

3. Brief facts which are relevant for the purpose of deciding the present application are as under:-

4. The complaint was filed by respondent No.2 in the Court of Metropolitan Magistrate in which it was averred that the accused No.1 is a Company registered under the Companies Act and is engaged in the manufacture of various products at Chennai and that accused Nos. 2 to 8 are directors of accused No.1 and are in charge of and responsible to accused No.1 for the conduct of its business. It is alleged in the complaint that the accused No.1 applied for financial assistance for the purpose of long term working capital requirement. The complainant, accordingly, sanctioned term loan of Rs 1000 lacs as per the terms and conditions mentioned in the letter dated 24/09/1996. The said terms and conditions were accepted by accused No.1 - Company.

5. A cheque was issued by accused No.1 dated 24/12/1997 for an amount of Rs 150 lacs in respect of the amount which had become due and payable to the

complainant on 19/10/1997. However, the cheque was dishonoured and the complainant was informed about the same on 30/12/1997 that the cheque was returned since the funds were insufficient in the account of accused No.1. It is further alleged that statutory notice dated 09/01/1998 was issued to the accused and copy of the same was delivered to accused No.1 on 13/01/1998. The receipt of notice was duly acknowledged by accused No.1. However, the amount was not paid within 15 days and, therefore, the said complaint was filed.

6. It is alleged by the applicants in the application that there were no averments in the complaint so far as their role is concerned and it is not specifically stated that they were in charge of and responsible for the day-to-day management of the Company. It was submitted that, therefore, in the absence of any specific averment, the complaint against the applicants is not maintainable. The second ground which is raised in the application is that the applicants resigned from the Board of Directors prior to the issuance of the cheque. Therefore, they are not liable for the offence alleged in the complaint. It is submitted that the applicant No.1 resigned from the Board of Directors on 12/12/1997 and applicant No.2 resigned on 22/11/1997 and that their

resignations were duly registered with the Registrar of Companies immediately and the requisite forms also had been filed immediately. Several other contentions were also raised by the learned Counsel for the applicants. The reliance was placed on number of judgments of the Supreme Court and the Judgments of this Court and also other High Courts.

7. The submissions made on behalf of the applicants were vehemently opposed by the learned Counsel appearing on behalf of the respondents. He submitted that in para 2 of the complaint there is a specific averment that the accused Nos. 2 to 8 are directors of accused No.1 and they are in charge of and responsible to the accused No.1 for the conduct of its business. He submitted that the said averments were sufficient for the purpose of prima facie proving the case against the applicants. He, therefore, submitted that the process was rightly issued by the learned Magistrate.

8. As regards the first submission made by the learned Counsel appearing on behalf of the respondent No.2 is concerned, the Supreme Court in its recent Judgment in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and anr., in **Appeal (cri.) 664 of**

2002 has held that merely because the applicants are Directors of the Company that by itself cannot be a ground for arraigning them as an accused and it has to be established, prima facie, that they are in charge of and responsible for the affairs of the Company. In the present case, there is no averment that the applicants are either Managing Director or Joint Managing Director of the Company or that any role is assigned to them whereby it could be stated that they are in charge of the day-to-day affairs of the Company. Thus, in the absence of specific averments in the complaint, the process issued against the applicants will have to be quashed on this ground alone.

9. The Criminal Application is accordingly allowed. The process which is issued against the applicants in Criminal Complaint No.3243/S/2 is quashed and set aside. The Trial Court to proceed to decide the case against the other accused as expeditiously as possible and, in any case, within a period of one year.

10. Criminal Application is accordingly disposed of.

V.M. KANADE, J.